

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN CADET,

Plaintiffs,

-against-

THE CITY OF NEW YORK, POLICE OFFICER JOHN  
WALSH (Shield 04008), POLICE OFFICER RICHARD  
KERN (Shield 9459), POLICE OFFICER LOWEZ  
WALKER (Shield 23357) and POLICE OFFICER  
MEHMET KANBUR (Shield 04045),

Defendants.

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**ANSWER TO AMENDED  
COMPLAINT**

07-CV-10646 (DAB)(RLE)

JURY TRIAL DEMANDED

Defendants City of New York, John Walsh, Richard Kern, Lowez Walker and Mehmet Kanbur by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the Amended Complaint, respectfully allege, upon information and belief, as follows.

1. Deny the allegations set forth in paragraph “1” of the Amended Complaint, except admit that plaintiff purports to proceed as stated therein.

2. Deny the allegations set forth in paragraph “2” of the Amended Complaint, except admit that plaintiff purports to bring this action and invoke the jurisdiction of the Court as stated therein.

3. Deny the allegations set forth in paragraph “3” of the Amended Complaint, except admit that plaintiff purports to invoke supplemental jurisdiction of the Court and base venue as stated therein and admit that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on or about January 24, 2007 and the claim has not been adjusted or paid.

4. Deny the allegations set forth in paragraph “4” of the Amended Complaint, except admit that plaintiff purports to base venue as stated therein.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the Amended Complaint.

6. Admit the allegations in paragraph “6” of the Amended Complaint.

7. Deny the allegations set forth in paragraph “7” of the Amended Complaint, except admit that John Walsh is employed by the City of New York as a police officer and that plaintiff purports to sue him in his individual capacity as stated therein.

8. Deny the allegations set forth in paragraph “8” of the Amended Complaint, except admit that Richard Kern is employed by the City of New York as a police officer and that plaintiff purports to sue him in his individual capacity as stated therein.

9. Deny the allegations set forth in paragraph “9” of the Amended Complaint, except admit that Lowez Walker is employed by the City of New York as a police officer and that plaintiff purports to sue him in his individual capacity as stated therein.

10. Deny the allegations set forth in paragraph “10” of the Amended Complaint, except admit that Mehmet Kanbur is employed by the City of New York as a police officer and that plaintiff purports to sue him in his individual capacity as stated therein.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Amended Complaint

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Amended Complaint

13. Deny the allegations set forth in paragraph “13” of the Amended Complaint.

14. Deny the allegations set forth in paragraph “14” of the Amended Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Amended Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the Amended Complaint.

17. Deny the allegations set forth in paragraph “17” of the Amended Complaint.

18. Deny the allegations set forth in paragraph “18” of the Amended Complaint.

19. Deny the allegations set forth in paragraph “19” of the Amended Complaint.

20. Deny the allegations set forth in paragraph “20” of the Amended Complaint.

21. Deny the allegations set forth in paragraph “21” of the Amended Complaint.

22. Deny the allegations set forth in paragraph “22” of the Amended Complaint, except admit that plaintiff was taken to the 71<sup>st</sup> Precinct.

23. Deny the allegations set forth in paragraph “23” of the Amended Complaint.

24. Deny the allegations set forth in paragraph “24” of the Amended Complaint.

25. Deny the allegations set forth in paragraph “25” of the Amended Complaint.

26. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the Amended Complaint.

27. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the Amended Complaint.

28. Deny the allegations set forth in paragraph “28” of the Amended Complaint

29. Deny the allegations set forth in paragraph “29” of the Amended Complaint.

30. Deny the allegations set forth in paragraph “30” of the Amended Complaint.

31. Deny the allegations set forth in paragraph “31” of the Amended Complaint.

32. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Amended Complaint.

33. Deny the allegations set forth in paragraph “33” of the Amended Complaint, except admit that on or about July 16, 2007, plaintiff accepted an adjournment in contemplation of dismissal.

34. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Amended Complaint.

35. Deny the allegations set forth in paragraph “35” of the Amended Complaint.

36. In response to the allegations set forth in paragraph “36” of the Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs “1” through “35” of this answer as if fully set forth herein.

37. Deny the allegations set forth in paragraph “37” of the Amended Complaint.

38. In response to the allegations set forth in paragraph “38” of the Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs “1” through “37” of this answer as if fully set forth herein.

39. Deny the allegations set forth in paragraph “39” of the Amended Complaint.

40. Deny the allegations set forth in paragraph “40” of the Amended Complaint.

41. Deny the allegations set forth in paragraph “41” of the Amended Complaint.

42. In response to the allegations set forth in paragraph “42” of the Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs “1” through “41” of this answer as if fully set forth herein.

43. Deny the allegations set forth in paragraph “43” of the Amended Complaint.

44. In response to the allegations set forth in paragraph “44” of the Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs “1” through “43” of this answer as if fully set forth herein.

45. Paragraph “45” of the Amended Complaint calls for a legal conclusion. Accordingly, no response is required.

46. Deny the allegations set forth in paragraph “46” of the Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

47. The Amended Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

48. Defendants City of New York, Walsh, Kern, Kanbur and Walker have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

49. At all times relevant to the acts alleged in the Amended Complaint, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

50. Defendants Walsh, Kern, Walker and/or Kanbur have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

51. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendants.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

52. Plaintiff may have failed to comply with the conditions precedent to suit.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

53. Punitive damages cannot be assessed against the City of New York.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

54. There was probable cause for plaintiff's arrest, detention and prosecution.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

55. At all times relevant to the incident, defendants acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

56. Plaintiff provoked any incident.

WHEREFORE, defendants request judgment dismissing the Amended Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 24, 2008

**MICHAEL A. CARDOZO**  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
100 Church Street  
New York, New York 10007  
(212) 676-1347

By: /s/  
 Brooke Birnbaum (BB 8338)  
 Assistant Corporation Counsel  
 Special Federal Litigation Division

To: Mr. Richard Cardinale, Esq. (via ECF)

Index No. 07-CV-10646 (DAB)(RLE)

<p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p>
<p>JONATHAN CADET,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">-against-</p> <p>THE CITY OF NEW YORK, POLICE OFFICER JOHN WALSH (Shield 04008), POLICE OFFICER RICHARD KERN (Shield 9459), POLICE OFFICER LOWEZ WALKER (Shield 23357) and POLICE OFFICER MEHMET KANBUR (Shield 04045),</p> <p style="text-align: right;">Defendants.</p>
<p style="text-align: center;"><b>ANSWER TO AMENDED COMPLAINT</b></p>
<p style="text-align: center;"><b>MICHAEL A. CARDOZO</b>  <i>Corporation Counsel of the City of New York</i>  <i>Attorney for Defendants</i>  <i>100 Church Street</i>  <i>New York, New York 10007</i></p> <p style="text-align: center;"><i>Of Counsel: Brooke Birnbaum</i>  <i>Tel: (212) 676-1347</i>  <i>NYCLIS No.</i></p>
<p><i>Due and timely service is hereby admitted.</i></p> <p><i>New York, N.Y. .... , 200..</i></p> <p><i>..... Esq.</i></p> <p><i>Attorney for .....</i></p>